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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

BRIEF OF AMICI CURIAE ON BEHALF OF UNION DES ARMATEURS BELGES, BELGIUM, DANSK DAMPSKIBSREDERIFORENING, DENMARK, FINLANDS REDAREFORENING, FINLAND, THE SHIPPING FEDERATION, LTD., GREAT BRITAIN, RAAD VAN BESTUR VOOR DE ZEEVAART, HOLLAND, SKIBSFARTENS ARBEIDSGIVERFORENING, NORWAY AND SVERIGES REDAREFORENING, SWEDEN, AND CONSENT TO FILE BRIEF.

JAMES S. HEMINGWAY,
Counsel for Amici Curiae.

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Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, *Deceased,*

Respondent.

I.

CONSENT TO FILE BRIEF AS *AMICI CURIAE,* PURSUANT TO RULE 27, PARAGRAPH 9(b) OF THE RULES OF THE UNITED STATES SUPREME COURT

The undersigned, counsel for the petitioner and counsel for the respondent, hereby consent to the filing of the brief herein by James S. Hemingway as counsel for Union des Armateurs Belges, Belgium, Dansk Dampskibsrederiforening, Denmark, Finlands Redareforening, Finland, The Shipping Federation, Ltd., Great Britain, Raad van Bestur voor de Zeevaart, Holland, Skibsfartens Arbeidsgiverforening, Norway and Sveriges Redareforening, Sweden, as *amici curiae.*

Dated: New York, N. Y.,
March 30, 1951.

CLETUS KEATING
VERNON S. JONES
Counsel for Petitioner

SILAS BLAKE AXTELL
ARNOLD W. KNAUTH
Counsel for Respondent

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, *Deceased,*

Respondent.

BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITION

The undersigned, as counsel for

Union des Armateurs Belges, Belgium
Dansk Dampskiberederiforening, Denmark
Finlands Redareforening, Finland
The Shipping Federation, Ltd., Great Britain
Raad van Bestur voor de Zeevaart, Holland
Skibsfartens Arbeidsgiverforening, Norway and
Sveriges Redareforening, Sweden

respectfully files as amici curiae the accompanying brief with the consent of the petitioner and respondent pursuant to Rule 27, paragraph 9(b) of the Rules of this Court.

JAMES S. HEMINGWAY
Counsel for Amici Curiae

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

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against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, *Deceased,*

Respondent.

BRIEF OF *AMICI CURIAE* ON BEHALF OF

Union des Armateurs Belges, Belgium
Dansk Dampskiberederiforening, Denmark
Finlands Redareforening, Finland
The Shipping Federation, Ltd., Great Britain
Raad van Bestur voor de Zeevaart, Holland
Skibsfartens Arbeidsgiverforening, Norway and
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II.

PRELIMINARY STATEMENT

The question presented on this appeal is whether the rights of an alien seaman signing ship's articles in the United States for a foreign voyage on a foreign ship is governed by the law of the flag of the vessel, where injury or illness occurs during the course of the voyage after

the vessel has left the territorial waters of the United States, or is such alien seaman entitled to the benefits of the so-called Jones Act, Section 33 of the Act of 1920 (46 U. S. C. 688), by reason of his signing ship's articles at a port in the United States.

The Court of Appeals of the State of New York has ruled that Jones Act benefits are not conferred upon an alien seaman suffering an illness on a foreign vessel while on the high seas. The fact that shipping articles were signed in a United States port does not make United States law applicable. *Sonnesen* v. *Panama Transport Co.*, 208 N. Y. 262; cert. den. 337 U. S. 919.

The United States Court of Appeals in the instant case, on an analogous set of facts, holds to the direct contrary. 179 F. (2d) 597.

A situation is therefore presented whereby an alien seaman who selects the forum of the New York State courts to prosecute an action for injury or illness sustained on the high seas on board a foreign vessel may not recover. If the action is brought for the same remedy in the United States District Court, recovery will be allowed under the Jones Act, where it appears that the seaman signed articles of engagement in a United States port.

The amici curiae herein are shipowners whose vessels trade into United States ports and fly the flags of seven of the maritime nations of the world. They engage an average of 15,000 seamen a year in United States ports. It is, of course, necessary to their operations for them to know the true nature of their respective legal rights and responsibilities in order that efficient standards may be maintained. The present sharp disparity of opinion between the New York State courts and the Federal courts concerning the rights of alien seamen and the responsibilities of foreign shipowners, has created a chaotic condition which requires clarification by this Court. It is the position of amici curiae that the engagement in the United States of an alien seaman by a foreign shipowner should not be considered as a determining factor

in awarding Jones Act benefits to him. This Court is respectfully urged to grant the petitioners' application for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on December 19, 1950.

III.

ARGUMENT

The so-called Jones Act, Section 33 of the Act of June 5, 1920 (46 U. S. C. 688) does not apply to an action brought by an alien seaman against a foreign shipowner to recover for injuries or illness received while a member of the crew of such vessel outside the United States.

A seaman whose services are engaged on a foreign vessel in a port in the United States is required to sign shipping articles before a Consular officer representing the nation of the flag of the vessel. These shipping articles are a contract between the master and seaman by which, among other things, the seaman agrees to be bound by the law of the flag of the vessel during his period of service thereon. The laws of the flags of the vessels operated by the respective shipowners amici curiae afford various benefits to seaman injured in the service of the ship. The purpose of such laws is to provide uniform benefits for each crew member, irrespective of his nationality. The failure on the part of a shipowner to pay the benefits provided for by the respective laws of the flags is subject to severe penalties. It is not intended in this brief to set forth the specific laws for the protection of seamen serving on the vessels of foreign shipowners except to point out that compensation, health insurance and pension benefits are amply provided for.

While it is true that cases in this and other courts have held that the Jones Act should be liberally construed in favor of seamen, it is also true that this and other courts

have repeatedly held that this liberality of construction should not interfere with the internal economy or discipline of a ship.

The Scotland, 105 U. S. 24, 26 L. Ed. 1001;

The Belgenland, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152;

United States v. *Rodgers,* 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071;

Cunard S. S. Co. v. *Mellon,* 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306;

Thompson Towing & Wrecking Association v. *McGregor,* 6 Cir., 207 F. 209, 217-219;

Rainey v. *New York & P. S. S. Co.,* 9 Cir., 216 F. 449, 454, L. R. A. 1916A, F. 171;

Grand Trunk R. Co. v. *Wright,* 6 Cir., 21 F. 2d 814;

Cain v. *Alpha S. S. Corp.,* 2 Cir., 35 F. 2d 717.

If the doctrine declared by the instant case is accepted as law, an alien seaman, by reason of the fact of his joining a foreign ship in a United States port would be entitled not only to Jones Act remedies but also to the benefits of the law of the flag if his injury or illness occurred on the high seas or even in the vessel's home port. This right to a two-fold recovery, it is suggested, amounts to a definite interference with the internal economy of a vessel.

Judge Learned Hand states that the rationale of the decision in *Kyriakos* v. *Goulandris,* 151 F. (2d) 132 compels a rejection of not only his and Judge Thomas W. Swan's views of the law but also compels a rejection of the decision of the New York State Court of Appeals in the *Sonnesen* case. The prevailing opinion of the Court in the *Kyriakos* case does not warrant such an interpretation. The prevailing opinion in the *Kyriakos* case was written by Judge A. N. Hand and concurred in by Judge Jerome N. Frank. A dissenting opinion was written by

Judge LEARNED HAND. The prevailing opinion states the question at page 136:

> "We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act. Although the matter is doubtful we believe that he can."

The answer to the foregoing question is set forth at page 137, and reads:

> "In the instant case libelant signed on in an American port and he was injured in an American port. We think this is sufficient both on reason and on authority."

As can be seen from the foregoing, the Court in its question set forth the factors necessary to apply the Jones Act as the place of signing of articles, the place of beginning of the voyage and the place of termination thereof, all of which are in the United States. The answer to the question makes only the place of signing articles and the place of injury material. The termination place of the voyage is not relevant. In the instant case, however, the Court does not deem the place of the happening of the illness as material but rests its decision solely upon the place where the shipping articles were signed by the seaman. Nowhere in the prevailing opinion of the *Kyriakos* case does it appear that the place of the happening of the injury is not a criterion.

A reading of the Statute, particularly the last sentence thereof, indicates clearly that Congress never intended to impose Jones Act liability upon foreign shipowners. If such was the intention it would have been so stated. It is provided in the last sentence of the Statute that jurisdiction in such actions shall be under the Court of the district *"in which the defendant employer resides or in which the principal office is located."* This part of the Statute has been construed by this Court as having to do with venue

rather than jurisdiction. *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375. Assuming, however, that the venue in a suit brought under the Jones Act is laid in the district where the employer resides or in which his principal office is located, it is still a clear indication that Congress had in mind the elimination of foreign seamen and steamship-owners from the benefits and liabilities of the Act, for it is common knowledge that foreign owners of vessels have neither residences nor principal offices in this country and their business is transacted solely through agents. It is also significant that no remedy *in rem* against a vessel is permitted under the Jones Act. *Plamels* v. *S. S. Pinar Del Rio*, 277 U. S. 151.

Judge Learned Hand in writing the unanimous opinion in *O'Neill* v. *Cunard White Star, Ltd.*, 160 F. (2d) 446, cert. den. 332 U. S. 773, rejected the proposition that the Jones Act applied to an alien seaman resident in the United States who was injured on the high seas on a foreign vessel. The seaman signed shipping articles abroad and was injured on the high seas on a leg of the voyage between England and Canada. His views concerning the application of Jones Act remedies to alien seamen injured outside United States territorial waters are clearly set forth at page 448 of his opinion, reading as follows:

> "In my dissent in Kyriakos *v.* Goulandris, supra, 2 Cir., 151 F. 2d 132, 139, I collected a number of decisions which I need not repeat now, which held that the law of the flag would ordinarily prevail. In the case at bar the situation is just reversed: we are to say, not when the Jones Act should give place to the law of the flag, but when the law of the flag should give place to the Jones Act in places where the Jones Act does not expressly apply. It is true that a state may impose duties upon its own nationals while they are abroad; Blackmer *v.* United States, 284 U. S. 421, 52 S. Ct. 252, 76 L. Ed. 375, but the plaintiff must prove that Congress meant to impose duties upon the nationals of other states while they were beyond the territorial limits of the United States, a proposition vastly different in its consequences. Perhaps Congress might

go even so far as that, granted an occasion pressing enough; but surely there should be the clearest warrant of its purpose to do so, for it is as extreme an exercise of power as one can well imagine: a bit of absolution beyond all ordinary conventions."

From the foregoing it is apparent in the view of Judge LEARNED HAND that the Jones Act was not intended to apply to alien seamen sustaining injury on foreign ships on the high seas. Although the *O'Neill* case was decided some time subsequent to the *Kyriakos* case, the unanimous court apparently did not consider the rationale of the *Kyriakos* case as decisive. There does not appear to be any sound reason for reverting to such rationale in deciding the instant case.

IV.

CONCLUSION

It is respectfully submitted that this Court should grant the petitioners' application for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on December 19, 1950.

Dated: New York, N. Y.,
March 30, 1951.

Respectfully submitted,

UNION DES ARMATEURS BELGES, Belgium
DANSK DAMPSKIBSREDERIFORENING, Denmark
FINLANDS REDAREFORENING, Finland
THE SHIPPING FEDERATION, LTD., Great Britain
RAAD VAN BESTUR VOOR DE ZEEVAART, Holland
SKIBSFARTENS ARBEIDSGIVERFORENING, Norway
and
SVERIGES REDAREFORENING, Sweden

By JAMES S. HEMINGWAY,
Counsel for Amici Curiae

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

BRIEF AS *AMICUS CURIAE* OF FRIENDS OF ANDREW FURUSETH LEGISLATIVE ASSOCIATION, IN OPPOSITION TO PETITION FOR CERTIORARI; AND CONSENT TO FILE BRIEF

CHARLES A. ELLIS,
Counsel for *Amicus Curiae*.

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In the

Supreme Court of the United States

October Term, 1950

No. 607

Atlantic Maritime Company and S. Livanos & Company, Inc.,

Petitioners,

against

A. Bradley Rankin, Administrator of the Estate of Lindeville Taylor, Deceased,

Respondent.

I. Consent to file brief as *amicus curiae*, pursuant to Rule 27, Par. 9(b), of the court's rules.

The undersigned, counsel for the parties herein, hereby consent to the filing of the within brief by Charles A. Ellis as counsel for Friends of Andrew Furuseth Legislative Association, as *amicus curiae*.

Dated, New York, N. Y., April 9th, 1951.

Cletus Keating,
Vernon S. Jones,
Counsel for Petitioners.

Silas Blake Axtell,
Arnold W. Knauth,
Counsel for Respondent.

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No. 607

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Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

BRIEF AS *AMICUS CURIAE* OF FRIENDS OF ANDREW FURUSETH LEGISLATIVE ASSOCIATION, IN OPPOSITION TO THE PETITION.

II. Preliminary Statement.

In view of the Court's Rule (27, par. 9(b)) that *amicus curiae* briefs prior to consideration of a petition for writ of certiorari are "not favored", we would not file this Brief except for one circumstance of the case affecting other litigants, including members of *amicus curiae,* as much as and perhaps more than the parties.

But this Court has indicated that the question of propriety, as distinct from the question of power, as to issuance of a writ may be foreclosed by issuance of the writ (*Forsyth* v. *Hammond,* 166 U. S. 506, 511).

And a comparison of the *record* herein with the Petition, Respondent's Brief in opposition, and the Brief of seven

European underwriters as *amici curiae* in support, discloses such a hiatus between the *record* and the proposed questions and reasons assigned for a writ, and renders the proposed questions so hypothetical at this interlocutory stage that the point should be stressed at this time. Otherwise, the rights of other litigants, particularly impoverished injured seamen not parties hereto but having claims which might be controlled by a hypothetical decision, may be gravely prejudiced if the interlocutory judgment be reviewed before any trial of the case, and if a decision be rendered on hypothetical questions without opportunity for the parties first to establish the facts at a trial.

III. Argument.

The Court of Appeals decision that the case should be tried is interlocutory and not final; the record does not adequately present the questions sought to be reviewed here; and it would be highly prejudicial to other litigants to review these questions hypothetically.

The principal ground alleged in the Petition for allowance of a writ and in the Brief of seven European underwriters as *amici curiae* in its support is an asserted conflict with *Sonnesen* v. *Panama Transport Company*, 298 N. Y. 262, cert. denied 337 U. S. 919, appl. denied 337 U. S. 961.

But, apart from distinctions noted in Respondent's Brief, which we shall not repeat, there are two basic and fundamental differences of immediate importance, viz.:

(1) The *Sonnesen* decision was rendered after trial of the case and rendition of judgment, whereas the case at bar involves merely interlocutory remand of a case for trial.

(2) In the *Sonnesen* case, the Court had before it a record containing all the facts, whereas the record

herein contains, besides the complaint, only an attorney's affidavit containing the barest of selfserving conclusions from a few homely expressions attributed to the seaman plaintiff-respondent respecting his "home", and allegations from the complaint as to the place of incorporation of defendants-Petitioners.

The case of *Kyriakos* v. *Goulandris*, C. C. A. 2, 151 F. 2d. 132, stressed in the Petition and other briefs, was also a case where all the facts had been established at trial.

While this Court has power to review even interlocutory judgments or decrees where the record shows facts making an immediate review of vital importance (*Gay* v. *Ruff*, 292 U. S. 25, 30-31), the Court's established policy is that except in extraordinary cases of peculiar gravity and pressing importance shown by the *record*, a writ will not be granted until final judgment or decree (*Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U. S. 251, 258; *American Construction Co.* v. *Jacksonville, Tampa & Key West Railway Co.*, 148 U. S. 372, 384; *United States* v. *General Motors Corp.*, 323 U. S. 373, 377; *Land* v. *Dollar*, 330 U. S. 731, 734, footnote 2; *Catlin* v. *United States*, 324 U. S. 229, 233-234; *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546). There must be involved a ruling which either is decisive of, or "is fundamental to the further conduct of the case" (*United States* v. *General Motors Corp.*, supra, 323 U. S. at 377).

In this case, whether any of the questions sought to be raised shall really arise, and if so, their scope and form and their answer (if not already settled law) will depend upon "*the realities of the record*" (*Indianapolis* v. *Chase Nat. Bank*, 314 U. S. 63, 69, italics ours), after all the facts are proved at a trial.

But, instead of a final judgment and trial record showing all the facts, we have here merely an interlocutory remand for trial. The defendants, indeed, have not as yet even filed answers.

The material part of the record (pp. 9-13) consists of an attorney's affidavit of less than five pages, containing *no facts whatsoever concerning the Petitioner companies, other than quotations from the complaint of allegations as to the place of their incorporation.* Compare *Kyriakos* v. *Goulandris, supra;* compare also Respondent's Brief in opposition, pages 1-2.

If the seaman were petitioning for review of the partial affirmance of dismissal below—"As to any claim under the maritime law" (179 F. 2d. 598)—an important question would be presented, in final and not interlocutory form, perforce the dismissal and the very inadequacy of the attorney's affidavit as ground for such dismissal.

But as the seaman is not petitioning, and only the shipowner and operator are, the attorney's affidavit and the interlocutory remand for trial are wholly inadequate to present the questions proposed for review. Trial may establish a case, from the facts as to Petitioners' organizational make-up and methods of operation, disclosing that the questions now sought to be prematurely reviewed are not even involved, and with liability resting, indeed, on grounds in which the seven European *amici curiae* could have no interest.

The importance of this affects others than the parties. To allow the attorney to say, or rather merely *suggest* in the bare manner he has—the simplest conclusion of a hearsay nature—that the seaman and his sea-craft activities and the Panamanian corporations and their operations are not subject to the Jones Act or American maritime law—including the Shipowners Liability (Sick & Injured Seamen) Convention as to maintenance and cure—merely because the seaman came from abroad originally and because the corporations were incorporated in Panama "is to beg the question to be decided" under proven facts (*International Shoe Co.* v. *Washington,* 326 U. S. 310, 316).

Both the Jones Act and the Convention represent national policy, the latter equally with the former equivalent to statutory policy; and "It has often been held that the interposition of a corporation will not be allowed to defeat a legislative policy, whether that was the aim or only the result of the arrangement" (*Anderson* v. *Abbott*, 321 U. S. 349, 362-363). As a trial would disclose, the petitioning corporations are "a mere department of" their owner's American business (cf. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, 273). (See Respondent's Brief in Opposition pp. 1-2). The motion made in the District Court and the Petition here are designed to seek, by premature ruling, without disclosure by defendants of this their actual status, a rule that will avoid such a disclosure and avoid the whole statutory policy of both the Jones Act and the Convention by the simple device of an attorney pointing out that Petitioners were incorporated abroad. They seek a precedent also for accomplishing this by the same device in all other such cases, so that no disclosure, by answer, affidavit or evidence at trial need ever be made as to a shipowner's actual status. Until a record be made by trial this "is to beg the question" upon which, basically, their liability may be determined by proven facts at trial, without even reaching any of the questions now urged for review.

Many seamen, having, as yet, alien nationality, and both with and without legal residence in the United States, ship out of American ports annually pursuant to articles signed here, and frequently upon vessels destined for a round trip voyage ending here. Some ships, with these and other alien as well as American nationals as crew members, recruited here, are registered in the name of or nominally are owned by alien, particularly Panamanian corporations, which as to actual ownership and everything except the technical device of corporate certificate, are in reality American owned behind the fictitious foreign front. Others, competing with them and with American shipping, use the

same device for alien owners, who have taken note of the apparent advantages of the masquerade as "Panamanian nationals." Still other strictly alien vessels and shipowners, with the precedent set by those masquerading as "Panamanian" and therefore as "alien," are enabled to compete in similar manner with American shipping without even troubling to employ the masquerade. They recruit crews, sign articles, insure liability risks and take on cargoes here, with other cargoes taken on abroad for return here, and with the articles—signed here—calling for discharge here at the voyage end; with the program then repeated for the subsequent voyage. Each case will differ radically according to the facts proved at trial.

All alike, however, including the American insurers covering the liability risks, then employ the tactic, when a man recruited and signed on here is injured, of seeking to demur to any claim by asserting that the injured claimant must first present himself at the "home" office—whether it be a mere statutory address or in reality a "principal" place of ultimate ownership. Often this is with fore-knowledge, possibly pre-design, that the man, now accustomed to the American way of life and liking it, and liking shipping under American signed articles, and possibly knowing that the company's wealth, ownership, real management and insurance coverage are all here, will decline a suggestion that he "return" to a foreign place from which he was not recruited and where possibly he never even had visited. It is, in any case, with the design and frequent result of shipowner and insurer shrugging off and adding to the profit column for deposit or distribution here any measure of liability.

If suit is brought, American attorneys are then employed, by shipowner or insurer alike, for a fraction of the liability-escaping profit, to plead solemnly in Court that the barest suggestion, from paper "incorporation" under some foreign law, that "aliens" are involved, must control the